

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE NATIONAL SECURITY AGENCY
TELECOMMUNICATIONS RECORDS
LITIGATION

This Document Relates to:

(1) All Actions Against the MCI and Verizon Defendants in the Master MCI and Verizon Consolidated Complaint, Dkt. 125; (2) *Bready, et al. v. Verizon Maryland* (06-06313); (3) *Chulsky et al. v. Cellco Partnership d/b/a Verizon Wireless* (06-06570); and (4) *Riordan, et al. v. Verizon Communications* (06-3574)

MDL Dkt. No. 06-1791-VRW

**CLASSIFIED DECLARATION
OF LT. GEN. KEITH B.
ALEXANDER, DIRECTOR,
NATIONAL SECURITY
AGENCY**

**SUBMITTED IN CAMERA,
EX PARTE**

Hon. Vaughn R. Walker

(U) I, Lieutenant General Keith B. Alexander, do hereby state and declare as follows:

I. (U) Introduction

1. (U) I am the Director of the National Security Agency (NSA), an intelligence agency within the Department of Defense. I am responsible for directing the NSA, overseeing the operations undertaken to carry out its mission and, by specific charge of the President and the Director of National Intelligence, protecting NSA activities and intelligence sources and methods. I have been designated an original TOP SECRET classification authority under Executive Order No. 12958, 60 Fed. Reg. 19825 (1995), as amended on March 25, 2003, and Department of Defense Directive No. 5200.1-R, Information Security Program Regulation, 32 C.F.R. § 159a.12 (2000).

2. (U) The purpose of this declaration is to support an assertion of the military and state secrets privilege (hereafter "state secrets privilege") by the Director of National Intelligence (DNI) as the head of the intelligence community, as well as the DNI's assertion of a statutory privilege under the National Security Act. Specifically, in the course of my official duties, I

Derived From: NSA/CSSM 1-52

Dated: 20041123

Declassify On: MR

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

Approved for public release May 5, 2014

~~TOP SECRET//COMINT- [REDACTED] //TSP//ORCON/NOFORN//MR-~~

1 have been advised of this litigation and the allegations in the various complaints in this action
2 brought against the Verizon Defendants, including the MCI entities.¹ As described herein,
3 various classified facts related to the Plaintiffs' claims are subject to the DNI's state secrets
4 privilege assertion. The disclosure of this information, which relates to NSA intelligence
5 information, activities, sources, and methods, reasonably could be expected to cause
6 exceptionally grave damage to the national security of the United States. In addition, it is my
7 judgment that sensitive state secrets are so central to the subject matter of the litigation that any
8 attempt to proceed in the case risks the disclosure of the secrets described herein and
9 exceptionally grave damage to the national security of the United States. Through this
10 declaration, I also hereby invoke and assert the NSA's statutory privilege set forth in section 6 of
11 the National Security Agency Act of 1959, Public Law No. 86-36 (codified as a note to 50 USC.
12 § 402) ("NSA Act"), to protect the information related to NSA activities described below. The
13 statements made herein are based on my personal knowledge of NSA activities and operations,
14 and on information available to me as Director of the NSA.

15 II. (U) Summary

16 3. ~~(TS//SI [REDACTED] //TSP//OC/NF)~~ This lawsuit implicates several highly
17 classified and critically important NSA intelligence activities and, in particular, [REDACTED]
18 [REDACTED] Although Plaintiffs wrongly claim that the NSA
19 conducts a dragnet of surveillance of the content of millions of communications sent or received
20 by people inside the United States, [REDACTED]
21 [REDACTED]

22
23 ¹ (U) Any reference to "Verizon" in this declaration includes all Verizon Defendants in
24 this matter. "Verizon" also specifically includes the MCI Defendants, which are now a part of
Verizon, even though "MCI" may at times be referenced separately.

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 4. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ The protection of information about these
15 activities, including the following, is vital to the national security of the United States: (1) [REDACTED]
16 [REDACTED] (2) any
17 information concerning whether particular individuals such as the named Plaintiffs have been
18 subject to any NSA intelligence activities; (3) program information about NSA intelligence
19 activities, including facts demonstrating that the TSP was limited to al Qaeda-related
20 international communications and was not a content surveillance dragnet; and (4) facts that
21 would tend to confirm or deny the existence of the NSA's meta data activities. Any disclosure or
22 official confirmation of this information would have exceptionally grave consequences for the
23 national security. Critical foreign intelligence sources and methods would be compromised,

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1 [REDACTED]
2 [REDACTED] and the ability
3 of the United States to [REDACTED]
4 [REDACTED] would be severely damaged.

5 5. (U) For these reasons, as set forth further below, the state secrets and statutory
6 privilege assertions that the DNI and I are making should be upheld and the information
7 described in this declaration should be protected from disclosure. I also believe that any further
8 litigation of this case poses exceptionally grave risks to the national security.

9 (U) Table of Contents

10 6. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ To facilitate the Court's review, this
11 declaration is organized as follows:

12 I. Introduction

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20 A. Information That May Tend to Confirm or Deny Whether Verizon/MCI
21 Has Assisted the NSA with Any Alleged Intelligence Activities
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 B. Information That May Tend to Confirm or Deny Whether or Not the Plaintiffs
6 Have Been Subject to Any Alleged NSA Activities That May Be at Issue in This
7 Matter

- 8 1. [REDACTED]
9 2. [REDACTED]
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11 C. Information Concerning NSA Activities, Sources, and Methods, and the Harm of
12 Disclosure

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19 **III. (U) Classification of Declaration**

20 7. (S) This declaration is classified TOP SECRET//COMINT [REDACTED]
21 [REDACTED]//TSP//ORCON/NOFORN//MR pursuant to the standards in Executive Order No.
22 12958, as amended by Executive Order No. 13292. Under Executive Order No. 12958,
23 information is classified "TOP SECRET" if unauthorized disclosure of the information
24 reasonably could be expected to cause exceptionally grave damage to the national security of the
United States; "SECRET" if unauthorized disclosure of the information reasonably could be

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 expected to cause serious damage to national security; and "CONFIDENTIAL" if unauthorized
2 disclosure of the information reasonably could be expected to cause identifiable damage to
3 national security. At the beginning of each paragraph of this declaration, the letter or letters in
4 parentheses designate(s) the degree of classification of the information the paragraph contains.
5 When used for this purpose, the letters "U," "C," "S," and "TS" indicate respectively that the
6 information is either UNCLASSIFIED, or is classified CONFIDENTIAL, SECRET, or TOP
7 SECRET.²

8 8. (S) Additionally, this declaration also contains Sensitive Compartmented
9 Information (SCI), which is "information that not only is classified for national security reasons
10 as Top Secret, Secret, or Confidential, but also is subject to special access and handling
11 requirements because it involves or derives from particularly sensitive intelligence sources and
12 methods." 28 C.F.R. § 17.18(a). Because of the exceptional sensitivity and vulnerability of such
13 information, these safeguards and access requirements exceed the access standards that are
14 normally required for information of the same classification level. Specifically, this declaration
15 references communications intelligence (COMINT), also referred to as special intelligence (SI),
16 which is a subcategory of SCI. COMINT or SI identifies SCI that was derived from exploiting
17 cryptographic systems or other protected sources by applying methods or techniques, or from
18 intercepted foreign communications.

19
20 ² (TS//SI//NF) [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 9. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ This declaration also contains information
2 related to or derived from the Terrorist Surveillance Program (TSP), a controlled access signals
3 intelligence program authorized by the President in response to the attacks of September 11,
4 2001. Although the President publicly acknowledged the existence of the TSP in December
5 2005, details about the program remain highly classified and strictly compartmented.
6 Information pertaining to this program is denoted with the special marking "TSP" and requires
7 more restrictive handling. [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 10. (S) In addition to the fact that classified information contained herein may not be
15 revealed to any person without authorization pursuant to Executive Order 12958, as amended,
16 this declaration contains information that may not be released to foreign governments, foreign
17 nationals, or non-U.S. citizens without permission of the originator and in accordance with DNI
18 policy. This information is labeled "NOFORN." The "ORCON" designator means that the
19 originator of the information controls to whom it is released. Finally, this document is marked
20 Manual Review ("MR") indicating that it is not subject to automatic declassification at any
21 specific date.

22 ³ (S) [REDACTED]
23 [REDACTED]
24 [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 **IV. (U) Background Information**

2 **A. (U) Background on The National Security Agency**

3 11. (U) The NSA was established by Presidential Directive in 1952 as a separately
4 organized agency within the Department of Defense. Under Executive Order 12333, § 1.12(b),
5 as amended, the NSA's cryptologic mission includes three functions: (1) to collect, process, and
6 disseminate signals intelligence (SIGINT) information, of which COMINT is a significant
7 subset, for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c)
8 the support of military operations; (2) to conduct information security activities; and (3) to
9 conduct operations security training for the U.S. Government.

10 12. (TS//SI) Signals intelligence (SIGINT) consists of three subcategories:
11 (1) communications intelligence (COMINT); (2) electronic intelligence (ELINT); and (3) foreign
12 instrumentation signals intelligence (FISINT). Communications intelligence (COMINT) is
13 defined as "all procedures and methods used in the interception of communications and the
14 obtaining of information from such communications by other than the intended recipients." 18
15 U.S.C. § 798. COMINT includes information derived from the interception of foreign and
16 international communications, such as voice, facsimile, and computer-to-computer information
17 conveyed via a number of means [REDACTED]

18 [REDACTED] Electronic intelligence (ELINT) is technical intelligence information derived from
19 foreign non-communications electromagnetic radiations except atomic detonation or radioactive
20 sources-in essence, radar systems affiliated with military weapons platforms (e.g., anti-ship) and
21 civilian systems (e.g., shipboard and air traffic control radars). Foreign instrumentation signals
22 intelligence (FISINT) is derived from non-U.S. aerospace surfaces and subsurface systems which
23 may have either military or civilian applications.

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1 13. (S) The NSA's SIGINT responsibilities include establishing and operating an
2 effective unified organization to conduct SIGINT activities set forth in Executive Order No.
3 12333, § 1.12(b), as amended. In performing its SIGINT mission, NSA has developed a
4 sophisticated worldwide SIGINT collection network that acquires, among other things, foreign
5 and international electronic communications and related information. The technological
6 infrastructure that supports the NSA's foreign intelligence information collection network has
7 taken years to develop at a cost of billions of dollars and untold human effort. It relies on
8 sophisticated collection and processing technology.

9 14. (U) There are two primary reasons for gathering and analyzing foreign
10 intelligence information. The first, and most important, is to gain information required to direct
11 U.S. resources as necessary to counter external threats. The second reason is to obtain
12 information necessary to the formulation of U.S. foreign policy. Foreign intelligence
13 information provided by the NSA is thus relevant to a wide range of important issues, including
14 military order of battle; threat warnings and readiness; arms proliferation; international terrorism;
15 and foreign aspects of international narcotics trafficking.

16 15. (S) The NSA's ability to produce foreign intelligence information depends on its
17 access to foreign and international electronic communications. Foreign intelligence produced by
18 COMINT activities is an extremely important part of the overall foreign intelligence information
19 available to the United States and is often unobtainable by other means. Public disclosure of
20 either the capability to collect specific communications or the substance of the information
21 derived from such collection itself can easily alert targets to the vulnerability of their
22 communications. Disclosure of even a single communication holds the potential of revealing
23 intelligence collection techniques that are applied against targets around the world. Once alerted,

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1 targets can frustrate COMINT collection by using different or new encryption techniques, by
2 disseminating disinformation, or by utilizing a different communications link. Such evasion
3 techniques may inhibit access to the target's communications and therefore deny the United
4 States access to information crucial to the defense of the United States both at home and abroad.
5 COMINT is provided special statutory protection under 18 U.S.C. § 798, which makes it a crime
6 to knowingly disclose to an unauthorized person classified information "concerning the
7 communication intelligence activities of the United States or any foreign government."

8 **B. (U) September 11, 2001 and the al Qaeda Threat.**

9 16. (U) On September 11, 2001, the al Qaeda terrorist network launched a set of
10 coordinated attacks along the East Coast of the United States. Four commercial jetliners, each
11 carefully selected to be fully loaded with fuel for a transcontinental flight, were hijacked by al
12 Qaeda operatives. Those operatives targeted the Nation's financial center in New York with two
13 of the jetliners, which they deliberately flew into the Twin Towers of the World Trade Center.
14 Al Qaeda targeted the headquarters of the Nation's Armed Forces, the Pentagon, with the third
15 jetliner. Al Qaeda operatives were apparently headed toward Washington, D.C. with the fourth
16 jetliner when passengers struggled with the hijackers and the plane crashed in Shanksville,
17 Pennsylvania. The intended target of this fourth jetliner was most evidently the White House or
18 the Capitol, strongly suggesting that al Qaeda's intended mission was to strike a decapitation
19 blow to the Government of the United States—to kill the President, the Vice President, or
20 Members of Congress. The attacks of September 11 resulted in approximately 3,000 deaths—
21 the highest single-day death toll from hostile foreign attacks in the Nation's history. In addition,
22 these attacks shut down air travel in the United States, disrupted the Nation's financial markets
23 and government operations, and caused billions of dollars of damage to the economy.

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~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

1 17. (U) On September 14, 2001, the President declared a national emergency "by
2 reason of the terrorist attacks at the World Trade Center, New York, New York, and the
3 Pentagon, and the continuing and immediate threat of further attacks on the United States."
4 Proclamation No. 7463, 66 Fed. Reg. 48199 (Sept. 14, 2001). The United States also
5 immediately began plans for a military response directed at al Qaeda's training grounds and
6 haven in Afghanistan. On September 14, 2001, both Houses of Congress passed a Joint
7 Resolution authorizing the President "to use all necessary and appropriate force against those
8 nations, organizations, or persons he determines planned, authorized, committed, or aided the
9 terrorist attacks" of September 11. Authorization for Use of Military Force, Pub. L. No. 107-40
10 § 21(a), 115 Stat. 224, 224 (Sept. 18, 2001) ("Cong. Auth."). Congress also expressly
11 acknowledged that the attacks rendered it "necessary and appropriate" for the United States to
12 exercise its right "to protect United States citizens both at home and abroad," and acknowledged
13 in particular that "the President has authority under the Constitution to take action to deter and
14 prevent acts of international terrorism against the United States." *Id.* pmb1.

15 18. (U) As the President made clear at the time, the attacks of September 11 "created
16 a state of armed conflict." Military Order, § 1(a), 66 Fed. Reg. 57833, 57833 (Nov. 13, 2001).
17 Indeed, shortly after the attacks, NATO took the unprecedented step of invoking article 5 of the
18 North Atlantic Treaty, which provides that an "armed attack against one or more of [the parties]
19 shall be considered an attack against them all." North Atlantic Treaty, Apr. 4, 1949, art. 5, 63
20 Stat. 2241, 2244, 34 U.N.T.S. 243, 246. The President also determined that al Qaeda terrorists
21 "possess both the capability and the intention to undertake further terrorist attacks against the
22 United States that, if not detected and prevented, will cause mass deaths, mass injuries, and
23 massive destruction of property, and may place at risk the continuity of the operations of the
24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 United States Government,” and he concluded that “an extraordinary emergency exists for
2 national defense purposes.” Military Order, § 1(c), (g), 66 Fed. Reg. at 57833-34.

3 19. (U) As a result of the unprecedented attacks of September 11, 2001, the United
4 States found itself immediately propelled into a worldwide war against a network of terrorist
5 groups, centered on and affiliated with al Qaeda, that possesses the evolving capability and
6 intention of inflicting further catastrophic attacks on the United States. That war is continuing
7 today, at home as well as abroad. Moreover, the war against al Qaeda and its allies is a very
8 different kind of war, against a very different enemy, than any other war or enemy the Nation has
9 previously faced. Al Qaeda and its supporters operate not as a traditional nation-state but as a
10 diffuse, decentralized global network of individuals, cells, and loosely associated, often disparate
11 groups, that act sometimes in concert, sometimes independently, and sometimes in the United
12 States, but always in secret—and their mission is to destroy lives and to disrupt a way of life
13 through terrorist acts. Al Qaeda works in the shadows; secrecy is essential to al Qaeda’s success
14 in plotting and executing its terrorist attacks.

15 20. (TS//SI//NF) The *In Camera* Declaration of Michael McConnell, Director of
16 National Intelligence, details the particular facets of the continuing al Qaeda threat and, thus, the
17 exigent need for the NSA intelligence activities described here. The NSA activities are directed
18 at that threat, [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 Global telecommunications networks, especially the Internet, have developed in recent years into
22 a loosely interconnected system—a network of networks—that is ideally suited for the secret
23 communications needs of loosely affiliated terrorist cells. Hundreds of Internet service

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1 providers, or "ISPs," and other providers of communications services offer a wide variety of
2 global communications options, often free of charge. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 21. ~~(TS//SI//NF)~~ [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 22. ~~(TS//SI)~~ Our efforts against al Qaeda and its affiliates therefore present critical
19 challenges for the Nation's communications intelligence capabilities. First, in this new kind of
20 war, more than in any other we have ever faced, communications intelligence is essential to our
21 ability to identify the enemy and to detect and disrupt its plans for further attacks on the United

22 ⁴ ~~(TS//SI//OC/NF)~~ [REDACTED]

23 [REDACTED]

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1 States. Communications intelligence often is the only means we have to learn the identities of
 2 particular individuals who are involved in terrorist activities and the existence of particular
 3 terrorist threats. Second, at the same time that communications intelligence is more important
 4 than ever, the decentralized, non-hierarchical nature of the enemy and their sophistication in
 5 exploiting the agility of modern telecommunications make successful communications
 6 intelligence more difficult than ever. It is against this backdrop that the risks presented by this
 7 litigation should be assessed, in particular the risks of disclosing particular NSA sources and
 8 methods implicated by the claims, [REDACTED]
 9 [REDACTED]

10 V. (U) Information Protected by Privilege

11 23. (U) As set forth further below, the following categories of information are subject
 12 to the DNI's assertion of the state secrets privilege and statutory privilege under the National
 13 Security Act, as well as my assertion of the NSA privilege:

14 A. (U) Information that may tend to confirm or deny whether
 15 Verizon/MCI has assisted the NSA with any alleged
 intelligence activities; and

16 B. (U) Information that may tend to confirm or deny whether
 17 the Plaintiffs have been subject to any of the alleged NSA
 18 intelligence activities that may be at issue in this matter;
 and

19 C. (U) Information concerning any NSA intelligence,
 activities, sources, or methods, including:

20 (1) (U) Information concerning the scope and operation of
 21 the Terrorist Surveillance Program, including information
 22 that may be needed to demonstrate that the TSP was limited
 23 to one-end foreign al Qaeda communications and that the
 NSA does not otherwise engage in the content surveillance
 dragnet that the Plaintiffs allege; and

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(2) (U) Information that would tend to confirm or deny whether the NSA collects large quantities of communication records information as Plaintiffs allege.

VI. (U) Description of Information Subject to Privilege and the Harm of Disclosure

A. (U) Information That May Tend to Confirm or Deny Whether Verizon/MCI Has Assisted the NSA with Any Alleged Intelligence Activities

24. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ [REDACTED]

25. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ [REDACTED]

⁵ ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 26. (TS//SI [REDACTED] //OC/NF) As set forth below, [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 [REDACTED] Significantly, although Plaintiffs allege that MCI and Verizon have assisted
14 the NSA with a massive, dragnet-type program involving the content surveillance of domestic
15 and international communications made by millions of Americans, such allegations are false.
16 The NSA does not conduct a dragnet of content surveillance of communications made to or from
17 the United States as Plaintiffs allege.

18
19
20
21
22 6 (TS//SI//OC/NF) [REDACTED]
23 [REDACTED]
24 [REDACTED]

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B. (U) Information That May Tend to Confirm or Deny Whether the Plaintiffs Have Been Subject to Any Alleged NSA Activities That May Be at Issue in This Matter

47. (U) The second major category of information as to which I am supporting the DNI's assertion of privilege, and asserting the NSA's own statutory privilege, concerns information as to whether particular individuals, including the Plaintiffs in the lawsuits against Verizon, have been subject to alleged NSA intelligence activities. As set forth below, confirmation or denial of such information would cause exceptionally grave harm to national security.

1. (TS//SI//TSP//OC/NF) [REDACTED]

48. (TS//SI//TSP//OC/NF) The named Plaintiffs in this action—which are those listed in paragraphs 24-123 of the Master Consolidated Complaint Against MCI Defendants and Verizon Defendants, as well as those named in the complaints in the *Bready*, *Riordan*, and *Chulsky* actions—allege that the content of their telephone and Internet communications and information related to those communications have been and are being intercepted, disclosed, divulged, and/or used without judicial or other lawful authorization. The NSA does not engage in a program of “dragnet” surveillance that captures the contents of all domestic telephone or Internet communications as Plaintiffs allege, [REDACTED]

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~~TOP SECRET//COMINT- [REDACTED] //TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT-[REDACTED]//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 2. (TS//SI-[REDACTED]//OC/NF) [REDACTED]
8 [REDACTED]

9 49. (TS//SI-[REDACTED]//OC/NF) [REDACTED]
10 [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19
20 16 (TS//SI//TSP//OC/NF) [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 17 (TS//SI-[REDACTED]//OC/NF) [REDACTED]
24 [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 3. (U) Harm of Disclosure

2 50. (TS//SI//TSP//OC/NF) [REDACTED]

3 [REDACTED]

4 [REDACTED] First, as a matter of course, the NSA cannot publicly confirm

5 or deny whether any individual is subject to the surveillance activities described herein, because

6 to do so would tend to reveal actual targets. For example, if the NSA were to confirm in this

7 case and others that specific individuals are not targets of surveillance, but later refuse to

8 comment (as it would have to) in a case involving an actual target, a person could easily deduce

9 by comparing such responses that the person in the latter case is a target. The harm of revealing

10 targets of foreign intelligence surveillance should be obvious. If an individual knows or suspects

11 he is a target of U.S. intelligence activities, he would naturally tend to alter his behavior to take

12 new precautions against surveillance. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] In addition, revealing

16 who is not a target would indicate who has avoided surveillance and who may be a secure

17 channel for communication. Such information could lead a person, secure in the knowledge that

18 he is not under surveillance, to help a hostile foreign adversary convey information;

19 alternatively, such a person may be unwittingly utilized or even forced to convey information

20 through a secure channel. Revealing which channels are free from surveillance and which are

21 not would also reveal sensitive intelligence methods and thereby could help any adversary evade

22 detection.

23

24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 51. (TS//SI [REDACTED] //OC/NF) [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 52. (TS//SI [REDACTED] //OC/NF) Disclosing any of this information would reveal
14 some of the Nation's most sensitive and important intelligence-gathering methods. For reasons
15 already discussed, such disclosures would cause exceptionally grave damage to the national
16 security by [REDACTED] as well as by alerting other
17 foreign adversaries to these critical intelligence-gathering methods. Disclosing whether the NSA
18 currently receives telephony or Internet meta data [REDACTED] would also violate specific
19 provisions of the FISC Telephone Records and FISC Pen Register Orders.

20 **C. (U) Information Concerning Any NSA Activities, Sources, or Methods, and the**
21 **Harm of Disclosure.**

22 53. (U) In addition to asserting privilege over whether the NSA has had a relationship
23 with MCI and Verizon in connection with the allegations in this case, and whether the Plaintiffs
24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON//NOFORN//MR~~

1 have been subject to any alleged intelligence activities, I am supporting the DNI's assertion of
2 privilege and asserting the NSA's statutory privilege over any other facts concerning NSA
3 intelligence sources and methods that would be needed to resolve this case. This includes: (1)
4 facts concerning the operation of the Terrorist Surveillance Program and any other NSA
5 intelligence activities needed to demonstrate that the TSP was limited as the President stated to
6 the interception of one-end foreign communications reasonably believed to involve a member or
7 agent of al Qaeda or an affiliated terrorist organization and that the NSA does not otherwise
8 conduct a dragnet of content surveillance as the Plaintiffs allege; and (2) facts that would
9 confirm or deny whether the NSA collects large quantities of communication records
10 information as the Plaintiffs allege. As set forth below, the disclosure of information needed to
11 address these allegations would cause exceptionally grave harm to national security.

12 **1. (U) Information Concerning Plaintiffs' Allegations of Content Surveillance.**

13 54. (U) In December 2005, President Bush explained that, after the September 11
14 attacks, he authorized the NSA to intercept the content of certain communications for which
15 there are reasonable grounds to believe that (1) such communication originated or terminated
16 outside the United States, and (2) a party to such communication is a member or agent of al
17 Qaeda or an affiliated terrorist organization. The President stated at the time that this activity,
18 now referred to as the Terrorist Surveillance Program, did not involve the collection of purely
19 domestic communications, or international communications with no al Qaeda connection, and
20 these facts were reiterated publicly by the Attorney General and then-Deputy Director of
21 National Intelligence. Nonetheless, I am advised that the Plaintiffs have alleged that the NSA
22 "intercepts millions of communications made or received by people inside the United States, and
23 uses powerful computers to scan their contents for particular names, numbers, words, or
24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 phrases." Master Verizon Complaint ¶ 165. As the President made clear in describing the
2 limited scope of the TSP, such allegations of a content surveillance dragnet are false. But if the
3 NSA had to demonstrate in this case that the TSP was limited as the President stated, and not a
4 dragnet as the Plaintiffs claim, and that the NSA does not otherwise engage in the dragnet that
5 Plaintiffs allege, sensitive and classified facts about the operation of the TSP and NSA
6 intelligence activities would have to be disclosed.

7 55. ~~(TS//SI//TSP//OC/NF)~~ The privileged information that must be protected from
8 disclosure includes the following classified details demonstrating the limited nature of the TSP.
9 First, interception of the content of communications under the TSP was triggered by a range of
10 information, including sensitive foreign intelligence, obtained or derived from various sources
11 indicating that a particular phone number or email address is reasonably believed by the U.S.
12 Intelligence Community to be associated with a member or agent of al Qaeda or an affiliated
13 terrorist organization. Professional intelligence officers at the NSA undertook a careful but
14 expeditious analysis of that information, and considered a number of possible factors, in
15 determining whether it would be appropriate to target a telephone number or email address under
16 the TSP. Those factors included whether the target phone number or email address was: (1)
17 reasonably believed by the U.S. Intelligence Community, based on other authorized collection
18 activities or other law enforcement or intelligence sources, to be used by a member or agent of al
19 Qaeda or an affiliated terrorist organization; [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 56. (TS//SI//TSP//OC/NF) Once the NSA determined that there were reasonable
9 grounds to believe that the target is a member or agent of al Qaeda or an affiliated terrorist
10 organization, the NSA took steps to focus the interception on the specific al Qaeda-related target
11 and on communications of that target that are to or from a foreign country. In this respect, the
12 NSA's collection efforts were [REDACTED] that the NSA had
13 reasonable grounds to believe carry the "one end" foreign communications of members or agents
14 of al Qaeda or affiliated terrorist organizations.

15 57. (TS//SI//TSP//OC/NF) [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19
20 ¹⁸ (TS//SI//TSP//OC/NF) [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 58. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 59. ~~(TS//SI//TSP//OC/NF)~~ The NSA took specific steps in the actual TSP
20 interception process to minimize the risk that the communications of non-targets were
21 intercepted. With respect to telephone communications, specific telephone numbers identified
22 through the analysis outlined above were [REDACTED]

23 [REDACTED] so that the only communications
24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 intercepted were those to or from the targeted number of an individual who was reasonably
 2 believed to be a member or agent of al Qaeda or an affiliated terrorist organization. For Internet
 3 communications, the NSA used identifying information obtained through its analysis of the
 4 target, such as email addresses [REDACTED] to target for collection the communications of
 5 individuals reasonably believed to be members or agents of al Qaeda or an affiliated terrorist
 6 organization.¹⁹

7 60. ~~(TS//SI//TSP//OC/NF)~~ In addition to procedures designed to ensure that the TSP
 8 was limited to the international communications of al Qaeda members and affiliates, the NSA
 9 also took additional steps to ensure that the privacy rights of U.S. persons were protected. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 ¹⁹ ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

[REDACTED]

19 At no point did the NSA search the
 content of the communications [REDACTED] with "key words" other than the targeted
 selectors themselves. Rather, the NSA targeted for collection only email addresses [REDACTED]
 20 [REDACTED] associated with suspected members or agents of al Qaeda or affiliated
 terrorist organizations, or communications in which such [REDACTED] were mentioned.
 21 In addition, due to technical limitations of the hardware and software currently used, incidental
 collection of non-target communications has occurred, and in such circumstances the NSA
 22 applies its minimization procedures to ensure that communications of non-targets are not
 disseminated. To the extent such facts would be necessary to dispel Plaintiffs' erroneous dragnet
 23 allegations, they could not be disclosed without revealing highly sensitive intelligence methods.

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON//NOFORN//MR~~

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4

61. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16

62. ~~(TS//SI//TSP//OC/NF)~~ In addition to these facts about the TSP, facts about other

17 NSA intelligence activities would be needed to explain or prove that the NSA does not conduct a

18

19

20

21

22

23

24

²⁰ ~~(U//FOUO)~~ In addition, in implementing the TSP, the NSA applied the existing Legal Compliance and Minimization Procedures applicable to U.S. persons to the extent not inconsistent with the President's authorization. See United States Signals Intelligence Directive (USSID) 18. These procedures require that the NSA refrain from intentionally acquiring the communications of U.S. persons who are not the targets of its surveillance activities, that it destroy upon recognition any communications solely between or among persons in the U.S. that it inadvertently acquires, and that it refrain from identifying U.S. persons in its intelligence reports unless a senior NSA official determines that the recipient of the report requires such information in order to perform a lawful function assigned to it and the identity of the U.S. person is necessary to understand the foreign intelligence or to assess its significance.

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 dragnet as Plaintiffs allege. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] None of these activities, however, could be

8 disclosed to address and rebut Plaintiffs' dragnet allegations without causing exceptionally grave

9 damage to the national security.

10 63. (U) Finally, to the extent the Plaintiffs in this case are challenging the lawfulness

11 of the TSP itself, facts about the operation of that program (which remain highly classified) also

12 could not be disclosed.

13 64. ~~(TS//SI//TSP//OC/NF)~~ For example, in conjunction with meta data analysis, the

14 TSP provided far greater operational swiftness and effectiveness for identifying the al Qaeda

15 terrorist network in the United States than the traditional procedures that had been used under the

16 Foreign Intelligence Surveillance Act. In order to ascertain as rapidly as possible the potential al

17 Qaeda terrorist threats facing the United States, the NSA must know not only what a foreign

18 terrorist target says in a particular telephone or Internet intercept, but with whom that person has

19 been communicating. To the extent individual court orders for all TSP targets could have been

20 required in advance under traditional FISA procedures, the NSA would have been unable to

21 target communications sent to and from new phone numbers or Internet accounts as quickly, and

22 valuable intelligence could have been lost.

23

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

65. (TS//SI//TSP//OC/NF) As noted, [REDACTED]

[REDACTED]

[REDACTED] the TSP, in conjunction with meta data collection and analysis, allowed the NSA to obtain rapidly not only the content of a particular communication, but connections between that target and others who may form a web of al Qaeda conspirators. In some cases, the NSA was able to begin collection on a target phone number in [REDACTED] [REDACTED] to begin collection on a targeted phone number or email address. In contrast, if individual applications have to be prepared and approved through the traditional FISA process before the NSA can target a newly identified phone number or email account associated with al Qaeda, vital information could be lost in the interim. The traditional FISA process is a highly effective tool for many types of surveillance activities, [REDACTED]

[REDACTED] it would have had to stop and demonstrate, through a multi-layered process involving NSA and DOJ counsel, the Attorney General, and the FISA Court, that each of numerous, [REDACTED] target numbers or emails requires coverage. Where the gravest of dangers are at stake—a catastrophic mass casualty terrorist attack against the U.S. Homeland and the corresponding need to track thousands of potential terrorists—and where [REDACTED]

²¹ (TS//SI//TSP//OC/NF) [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED] to hide their communications and tracks, it is vital that the NSA be able to track multiple
2 communications, contacts, and [REDACTED] as rapidly as possible to fulfill its mission to protect the
3 national security of the United States.

4 66. ~~(TS//SI//TSP//OC/NF)~~ None of the foregoing information about the Terrorist
5 Surveillance Program could be disclosed in this case, however, without causing exceptionally
6 grave harm to the national security. Even though the President has determined not to reauthorize
7 the TSP, revealing how the program operated would provide key insights to foreign adversaries
8 as to how the NSA monitors communications. Information about the specific foreign
9 intelligence factors that triggered interception under the TSP would obviously reveal to foreign
10 adversaries the very facts that would most likely lead to their communications being intercepted,
11 even under the current FISA Court Orders, thereby giving adversaries a roadmap as to how to
12 avoid such interception. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 67. ~~(TS//SI//TSP//OC/NF)~~ Likewise, information about the speed and agility with
17 which the NSA can collect content on a target, and how long it might maintain surveillance,
18 would provide invaluable insights for an adversary to devise new and different ways to protect
19 their communications. In particular, disclosure of the NSA's ability to utilize the TSP (or,
20 therefore, the current FISA Court-authorizes content collection) in conjunction with contact
21 chaining [REDACTED] would severely undermine efforts to detect terrorist activities.

22 Armed with this knowledge, an adversary could make more robust use [REDACTED]

23 [REDACTED] Also, as noted, [REDACTED]

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1 [REDACTED]
2 [REDACTED] Compromise of one NSA
3 method of surveillance, even no longer in use, can easily lead to evasive actions as to other
4 current methods that would deprive U.S. decision-makers of critical information needed to detect
5 al Qaeda terrorist threats.

6 2. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ Information Concerning Meta Data Activities

7 68. (U) I am advised that this lawsuit also puts at issue allegations concerning
8 whether the NSA has acquired large quantities of communication records. Confirmation or
9 denial of any information concerning these particular allegations, however, will cause
10 exceptionally grave damage to the national security.

11 69. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ As noted above, starting in October 2001, and now
12 pursuant to the FISC Pen Register Order, [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] pursuant to the FISC Telephone Records Order, [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED] Disclosure of the NSA's meta
21 data collection activities, either before or after FISC authorization, would cause exceptionally
22 grave harm to national security.

23 70. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ In particular, the bulk collection of Internet and
24 telephony meta data allows the NSA to use critical and unique analytical capabilities to track the

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~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

1 contacts [REDACTED] of members or agents of [REDACTED]
2 [REDACTED] through the use of two highly sophisticated tools known as "contact chaining" and
3 [REDACTED] Contact-chaining allows the NSA to identify telephone numbers and email
4 addresses that have been in contact with known [REDACTED] numbers and addresses; in
5 turn, those contacts can be targeted for immediate query and analysis as new [REDACTED]
6 numbers and addresses are identified. Obtaining the meta data [REDACTED] in bulk, moreover,
7 allows the NSA not only to track the contacts made by a particular telephone number or email
8 address from a certain point in time going forward, but also to trace historically the contacts
9 made with that number or address. This tool has been highly useful in detecting previously
10 unknown terrorist operatives or agents for further surveillance.

11 71. (TS//SI [REDACTED]//OC/NF) [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 72. (TS//SI [REDACTED]//OC/NF) [REDACTED]
22 [REDACTED]
23 [REDACTED]
24

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[REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]

13 73. ~~(TS//SI//TSP//OC/NF)~~ The capability provided by meta data analysis may be
 14 illustrated by an example of when this tool was not utilized. According to the 9/11 Commission
 15 report, when Khalid al-Mihdhar, one of the 9/11 hijackers, was in the United States from January
 16 2000 to June 2001, he telephoned the home of his wife's family in Yemen. The phone number
 17 for this home in Yemen had well-established terrorist connections²² and was being targeted by
 18 the NSA through an overseas collection process that did not have the capability to obtain meta
 19 data to help identify the location of incoming calls. At the time, there was no FISA collection on
 20 this number, and neither the TSP program, under which the NSA targeted one-end foreign calls
 21

22 ²² ~~(TS//SI//NF)~~ In August 1998, the number was found in the pocket of one of the
 23 would-be Kenyan Embassy bombers, who had fled the bomb-laden vehicle at the last minute.
 24 [REDACTED]

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1 into the United States, nor collection of bulk meta data that would have allowed analysis of this
2 number to ascertain other contact numbers, were in place. Had the Yemeni phone number been
3 targeted using the TSP and were meta data analysis available, we should have been able to
4 identify that al-Mihdhar was in the United States when he called the number in Yemen, which
5 would have provided leads to investigate the matter further. Indeed, the 9/11 Commission report
6 noted that if the FBI had known that al Mihdhar was in the United States, "investigations or
7 interrogation of [al Mihdhar], and investigation of [his] travel and financial activities could have
8 yielded evidence of connections to other participants in the 9/11 plot. The simple fact of [his]
9 detention could have derailed the plan. In any case, the opportunity did not arise." Final Report
10 of the National Commission on Terrorist Attacks Upon the United States ("9/11 Commission
11 Report") at 272. While there is an element of hindsight to this example, and perhaps other
12 actions could have detected al Mihdhar, the existence of the TSP and meta data activities would
13 have provided a highly significant tool that may have proved valuable in detecting the 9/11 plot.

14 74. ~~(TS//SI//TSP//OC/NF)~~ Based on my experience as Director of the NSA, I believe
15 that the meta data collection activities authorized by the President after 9/11 and subsequently
16 authorized by the FISC are among the most important intelligence tools available to the United
17 States for protecting the Homeland from another catastrophic terrorist attack. In my view, the
18 NSA could not have obtained certain critical intelligence in any other way. These NSA activities
19 have given the United States unparalleled ability to understand [REDACTED]

20 [REDACTED] If employed on a sufficient volume of raw data, contact
21 chaining [REDACTED] can expose [REDACTED] and contacts that were
22 previously unknown. Meta data collection thus enables the NSA to segregate some of that very
23 small amount of otherwise undetectable but highly valuable information from the overwhelming

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1 amount of other information that has no intelligence value whatsoever—in colloquial terms, to
2 find at least some of the needles hidden in the haystack. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Disclosure or confirmation of the NSA's bulk collection and targeted analysis of telephony meta
14 data would confirm to all of our foreign adversaries [REDACTED] the
15 existence of these critical intelligence capabilities and thereby severely undermine NSA's ability
16 to gather information concerning terrorist connections.

17 3. ~~(TS//SI//TSP//OC/NF)~~ **Information Demonstrating the Success of the**
18 **TSP and Meta Data Activities.**

19 75. ~~(TS//SI//TSP//OC/NF)~~ Specific examples of how the TSP, in conjunction with
20 meta data analysis, led to the development by the NSA of actionable intelligence and important
21 counter-terrorism efforts help illustrate the effectiveness and need for the program, but could not
22 be disclosed without revealing specific NSA intelligence information, sources, and methods. For
23 example:

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

- 1 A. (TS//SI//TSP//OC/NF) [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]

24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4

B. (TS//SI//TSP//OC/NF) [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9

C. (TS//SI//TSP//OC/NF) [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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D. (TS//SI//TSP//OC/NF) [REDACTED]

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E. (TS//SI//TSP//OC/NF) [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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F. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

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G. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

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H. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 I. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 J. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 76. ~~(TS//SI//TSP//OC/NF)~~ Information about any of the successes of NSA activities
23 would not only be revealing of the substantive knowledge of the United States Government as to

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~~TOP SECRET//COMINT- [REDACTED] /TSP//ORCON/NOFORN//MR~~

1 terrorist plans and activities, but would also tend to reveal or confirm to all of our foreign
2 adversaries the sources and methods by which the United States obtained such information.

3 4. ~~(TS//SI//OC/NF)~~ Information Concerning FISC Orders.

4 77. ~~(TS//SI//TSP//OC/NF)~~ Information concerning the various orders of the Foreign
5 Intelligence Surveillance Court mentioned throughout this declaration must remain protected
6 from public disclosure. As discussed above, the three relevant NSA intelligence activities
7 authorized by the President after the September 11 attacks to detect and prevent a further al
8 Qaeda attack—the TSP, Internet meta data collection, and telephony meta data collection—have
9 been subject to various orders of the FISC and are no longer being conducted under Presidential
10 authorization. The very existence of the meta data FISC orders—the FISC Pen Register Order
11 (first issued in July 2004) and the FISC Telephone Records Order (first issued in May 2006)—
12 remains classified. The President authorized the disclosure of the general existence of the
13 January 10, 2007 FISC orders that authorized electronic surveillance of [REDACTED]
14 individuals in a manner similar to that undertaken in the TSP, and President's authorization of
15 the TSP lapsed in February 2007. Information that may reveal the existence of the undisclosed
16 FISC orders or the substance of any of these orders should be protected from disclosure.

17 78. ~~(TS//SI- [REDACTED] //OC/NF)~~ Disclosure of information about and within the
18 FISC orders would obviously reveal intelligence sources and methods currently being utilized by
19 the NSA under Court order and, thus, would cause exceptional harm to national security. For
20 example, as discussed above, the FISC Telephone Records Order requires [REDACTED]

21 [REDACTED] and authorizes the NSA to access its
22 archive of collected telephony meta data only when the NSA has identified a known telephone
23 number reasonably suspected to be associated with [REDACTED]

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~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

1 [REDACTED] The Order also provides that a telephone number believed to be used by a U.S.
 2 person shall not be regarded as associated with [REDACTED]
 3 solely on the basis of activities that are protected by the First Amendment. The FISC Pen
 4 Register Order authorizes the use of a pen register and trap and trace device to collect Internet
 5 meta data [REDACTED] on similar terms. Disclosure of these facts would reveal
 6 sensitive sources and methods utilized by the NSA to obtain data utilized to track [REDACTED]
 7 and contacts of [REDACTED]²³

8 79. ~~(TS//SI//OC/NF)~~ The intelligence activities authorized by the FISC Pen Register
 9 and FISC Telephone Records Orders must not be compromised by the disclosure of other
 10 information. For example, as discussed above, the disclosure of [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]

14 [REDACTED] Thus, any attempt to address the lawfulness of the meta data activities under
 15 Presidential authorization prior to the FISC orders could not disclose, or risk disclosure of,
 16 current NSA operations under FISC Orders.
 17
 18

19 ²³ ~~(TS//SI//OC/NF)~~ For this reason, the FISC Telephone Records Order and
 20 FISC Pen Register Orders prohibit any person, [REDACTED] from disclosing
 21 to any other person that the NSA has sought or obtained the telephony meta data, other than to
 22 (a) those persons to whom disclosure is necessary to comply with the Order; (b) an attorney to
 23 obtain legal advice or assistance with respect to the production of meta data in response to the
 24 Order; or (c) other persons as permitted by the Director of the FBI or the Director's designee.
 The FISC Orders further provide that any person to whom disclosure is made pursuant to (a), (b),
 or (c) shall be subject to the nondisclosure requirements applicable to a person to whom the
 Order is directed in the same manner as such person. [REDACTED]
 [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 80. ~~(TS//SI//OC/NF)~~ The disclosure of information concerning the recent FISC
 2 Orders authorizing electronic surveillance would also harm national security. The January 10,
 3 2007 Foreign Telephone and Email Order authorized, among other things, electronic surveillance
 4 of telephone and Internet communications [REDACTED] when the
 5 Government determines that there is probable cause to believe that (1) one of the communicants
 6 is a member or agent [REDACTED] and (2) the
 7 communication is to or from a foreign country, i.e., a one-end foreign communication to or from
 8 the United States.²⁴ The telephone numbers and email addresses to be targeted (i.e., "selectors")
 9 under this order were further limited to those that the NSA reasonably believes are being used by
 10 persons *outside* the United States. Under the order, every 30 days the Government is required to
 11 submit a report to the FISA Court listing new selectors that the NSA has targeted during the
 12 previous 30 days and briefly summarizing the basis for the NSA's determination that the
 13 probable cause standard has been met.

14 81. ~~(TS//SI//OC/NF)~~ The surveillance under this new FISA Court Foreign
 15 Telephone and Email Order, which is subject to detailed minimization and oversight procedures,
 16 was authorized for 90 days and indicated that it may be reauthorized by the FISA Court upon
 17 application by the Attorney General. The order states that, with each request for reauthorization,
 18 the Government is required to present a list of current selectors previously reported to the FISA
 19 Court that the Government intends to continue to task for collection under the reauthorization.
 20 The order further indicated that, at any time, the FISA Court may request additional information
 21 regarding particular selectors, and, if the Court finds that the applicable probable cause standard

22 ²⁴ ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]
 23 [REDACTED] That fact, which is not relevant to this action, is, like
 24 the other details in the orders, highly classified.

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 is not met, it may direct that the surveillance under the order shall cease on the selector(s) in
2 question. The innovation of this order was that it allowed the Government to target for
3 collection communications related to new [REDACTED] selectors used by terrorists
4 without having to seek advance approval from the FISA Court for each individual selector.
5 Upon the initiation of the surveillance authorized under the Foreign Telephone and Email Order,
6 the NSA monitored over [REDACTED] foreign selectors. [REDACTED] the reporting of
7 these initial selectors occurred over a 90-day period.

8 82. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 ²⁵ ~~(TS//SI//OC/NF)~~ [REDACTED]
23 [REDACTED]
24

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]²⁶ While the general existence of the January 2007 orders,
3 as described publicly by the Attorney General, is not classified, the number, nature, and contents
4 of the specific orders described herein are highly classified. Among other things, disclosing to
5 our enemies what surveillance activities, targets and methods are or are not covered by FISA
6 Court orders would reveal sources and methods of intelligence gathering, and enable the enemy
7 to alter its communications to evade detection.

8 83. ~~(TS//SI//OC/NF)~~ [REDACTED] the Government filed applications
9 with the FISA Court to renew for 90 days the surveillance authority granted by the FISA Court's
10 January 10 orders. These applications were considered by a different FISA Court Judge based
11 on the FISA Court's typical assignment practice. By order [REDACTED] the FISA Court
12 [REDACTED]
13 [REDACTED]

14 [REDACTED] The Court, however, did not grant the Government's application to renew the
15 surveillance authority in the Foreign Telephone and Email Order (concerning surveillance
16 targeting telephone numbers and e-mail addresses reasonably believed to be used by persons
17 outside the United States). Rather, it issued an Order and Memorandum opinion on April 3,
18 2007, declining to adopt the interpretation of the Foreign Intelligence Surveillance Act
19 underlying the Government's application for the Foreign Telephone and Email Order. The Court
20

21 ²⁶ ~~(TS//SI//OC/NF)~~ [REDACTED]
22 [REDACTED]
23 [REDACTED] it plans to do so by a process in
24 which it will obtain authorization of the FISA Court for each individual selector.

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 nevertheless ordered that the Government could submit an application for a single extension of
2 the Foreign Telephone and Email Order to May 31, 2007. The Court contemplated that an
3 extension of surveillance authority to May 31 would allow the Government to submit an
4 application that might permit the Court "to authorize at least part of the [requested] surveillance
5 in a manner consistent with [its] order and opinion." On the Government's application, the
6 Court granted a separate order issued on April 5, 2007, extending the surveillance authority
7 granted by the Foreign Telephone and Email Order to May 31, 2007.

8 84. ~~(TS//SI//OC/NF)~~ The Government is reviewing the new FISA Court orders and
9 intends to work with the FISA Court in the hopes of developing an approach for continuing the
10 authorized surveillance beyond May 31, 2007, in a manner consistent with the April 3, 2007,
11 order of the FISA Court. The details of these orders, and targets implicated by the orders, like
12 the operational details and targets of the ongoing FISA Court-approved surveillance, are highly
13 classified. Thus, information about the nature of these recent FISC orders should not be
14 disclosed in this case.

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

VII. (U) Risks of Allowing Litigation to Proceed

85. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ Upon examination of the allegations, claims, facts, and issues raised by this case, it is my judgment that sensitive state secrets are so central to the subject matter of the litigation that any attempt to proceed will substantially risk the disclosure of the privileged state secrets described above. This case directly implicates the conduct of highly classified NSA intelligence activities. Those activities are not peripheral to the case: they are the very subject of this lawsuit. In my judgment, any effort to probe the outer-bounds of classified information would pose inherent and significant risks of the disclosure of classified information,

[REDACTED]

[REDACTED]

86. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ Indeed, any effort merely to allude to those facts in a non-classified fashion could be revealing of classified details that should not be disclosed. As noted, even seemingly minor or innocuous facts, in the context of this case or other non-classified information, can tend to reveal, particularly to sophisticated foreign adversaries, a [REDACTED] of U.S. intelligence gathering sources and methods.

87. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VIII. (U) Summary and Conclusion

88. ~~(TS//SI//NF)~~ The United States has an overwhelming interest in detecting and thwarting further mass casualty attacks by al Qaeda. The United States has already suffered one attack that killed thousands, disrupted the Nation's financial center for days, and successfully

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 struck at the command and control center for the Nation's military. Al Qaeda continues to
2 possess the ability and clear, stated intent to carry out a massive attack in the United States that
3 could result in a significant loss of life, as well as have a devastating impact on the U.S.
4 economy. According to the most recent intelligence analysis, attacking the U.S. Homeland
5 remains one of al Qaeda's top operational priorities, *see In Camera* Declaration of Michael
6 McConnell, DNI, and al Qaeda will keep trying for high-impact attacks as long as its central
7 command structure is functioning and affiliated groups are capable of furthering its interests.

8 89. ~~(TS//SI//NF)~~ Al Qaeda seeks to use our own communications infrastructure
9 against us as they secretly attempt to infiltrate agents into the United States, waiting to attack at a
10 time of their choosing. One of the greatest challenges the United States confronts in the ongoing
11 effort to prevent another catastrophic terrorist attack against the Homeland is the critical need to
12 gather intelligence quickly and effectively. Time is of the essence in preventing terrorist attacks,
13 and the government faces significant obstacles in finding and tracking agents of al Qaeda as they
14 manipulate modern technology in an attempt to communicate while remaining undetected. The
15 NSA activities described herein are vital tools in this effort.

16 90. ~~(TS//SI//NF)~~ For the foregoing reasons, in my judgment the disclosure of the
17 information at issue in this lawsuit would cause exceptionally grave damage to the national
18 security of the United States. In addition to upholding the state secrets privilege and statutory
19 privilege assertions by the Director of National Intelligence in this case, I request that the Court
20 also uphold my assertion of NSA's statutory privilege to protect information about NSA
21 activities. Finally, it is my view that continued litigation of this lawsuit, which directly puts at
22 issue highly classified NSA intelligence activities [REDACTED]

23 [REDACTED] would risk the disclosure of sensitive classified information and,

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

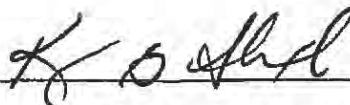
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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 accordingly, that the Court should not only protect from disclosure the classified information
2 described herein but dismiss this lawsuit.

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7 I declare under penalty of perjury that the foregoing is true and correct.

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9 DATE: 20 Apr 07



10 LT. GEN. KEITH B. ALEXANDER
11 Director, National Security Agency
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